



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 132 3272]**

**Nice-Pak Products, Inc.; Analysis of Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before June 19, 2015.

**ADDRESSES:** Interested parties may file a comment at

<https://ftcpublishcommentworks.com/ftc/nicepakconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Nice-Pak Products - Consent Agreement; File No. 132-3272” on your comment and file your comment online at

<https://ftcpublishcommentworks.com/ftc/nicepakconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Nice-Pak Products - Consent Agreement; File No. 132-3272” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your

comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Sylvia J. Kundig, FTC Western Region, (415) 848-5188, 901 Market Street, Suite 570, San Francisco, CA 94103.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 18, 2015), on the World Wide Web at: <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 19, 2015. Write "Nice-Pak Products - Consent Agreement; File No. 132-3272" on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card

number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/nicepakconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Nice-Pak Products - Consent Agreement; File No. 132-3272 on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR § 4.9(c).

address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 19, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing consent order from Nice-Pak Products, Inc. ("Nice-Pak").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Nice-Pak is a manufacturer of "flushable" moist toilet tissue made from non-elemental chlorine bleached wood pulp, bicomponent fibers and EP907 repulpable binder. It advertised the flushable moist toilet tissue as being safe for sewer and septic systems, and breaking apart shortly after flushing. The Commission's complaint, however, alleges that Nice-Pak did not have adequate substantiation for the claims, because its substantiation did not accurately reflect the real-world conditions that the moist toilet tissue encounters after flushing. In addition, the complaint alleges that Nice-Pak provided retailers, such as Costco, CVS, Target, and BJ's, that

sold the Nice-Pak flushable moist toilet tissue under their private labels with the inadequate substantiation and the retailers then repeated the unsubstantiated claims.

The proposed consent order contains provisions designed to prevent Nice-Pak from engaging in similar acts or practices in the future.

**Part I** of the order prohibits Nice-Pak from misrepresenting that any wipe is safe to flush unless Nice-Pak's substantiation demonstrates that the wipe will disperse in a sufficiently short amount of time after flushing to avoid clogging or other operational problems in household and municipal sewage lines, septic systems and other standard wastewater equipment, and that those tests substantially replicate the physical conditions of the environment the wipe will be disposed in.

**Part II** of the proposed order prohibits Nice-Pak from making any representation about moist toilet tissue unless the representation is non-misleading, and, at the time it is made, Nice-Pak possesses and relies upon competent and reliable evidence that substantiates the representation.

**Part III** of the proposed order prohibits Nice-Pak from providing the means and instrumentalities to others to make the representations that Nice-Pak would be prohibited from making by Parts I and II of the proposed order.

**Part IV** of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

**Parts V, VII and VIII** of the proposed order require Nice-Pak to: deliver a copy of the order to certain personnel having managerial responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

**Part VI** of the proposed order requires Nice-Pak to provide notice of the order to its private label customers.

**Part IX** of the proposed order provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Donald S. Clark  
Secretary.

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